IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 35274 of 2007(S)

OA.657/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENCE, HEADQUARTERS, SOUTH BLOCK, NEW DELHI.

2. THE CHIEF OF THE NAVAL STAFF, INTEGRATED HEADQUARTERS, MINISTRY OF DEFENCE, NAVAL HEADQUARTERS, NEW DELHI - 110 011.

3. THE FLAG OFFICER COMMANDING-IN-CHIEF, HEADQUARTERS, SOUTHERN NAVAL COMMAND, NAVAL BASE, KOCHI - 682 004.

4. THE FLAG OFFICER COMMANDING, HEADQUARTERS, GOA NAVAL AREA, VASCODA GAMA (GOA) - 403 802.

BY ADV. SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS

RESPONDENTS:

1. M.R.TIWARI, CIVILIAN TECHNICAL OFFICER, NAVAL AIRCRAFT YARD (K), NAVAL BASE, KOCHI - 682 004.

2. K.P.THAMPI, CIVILIAN TECHNICAL OFFICER, DO. DO.

BY ADV. SRI.S.RADHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 35274 of 2007 S

JUDGMENT

Balakrishnan Nair, J.

The petitioners were respondents 1 to 4 and the respondent was the applicant in O.A.No.657/06 before the Central Administrative Tribunal, Ernakulam Bench.

2. The applicant approached the Central Administrative Tribunal claiming promotion to the post of Civilian Technical Officer with retrospective effect. The feeder category for promotion to the said post is Senior Foreman, which was subsequently re-designated as Foreman. The applicant was appointed to the post of Senior Foreman in Naval Headquarters on 1.5.1985. By Annexure-A2 order dated 1.9.1986, produced along with Exhibit P3 original application, the said appointment was regularised with effect from

1.5.1985. While so, again, another order Annexure-A3 dated 23.7.1997 was passed, which is produced along with Exhibit P3 original application, as per which, he was again absorbed as Temporary Regular Foreman. Since he was already appointed on a regular basis with effect from 1.5.1985, his Commanding Officer sought clarification on Annexure-A3. From the materials produced in this writ petition, it is evident that further clarifications were also sought, but, they remained unanswered. The applicant was promoted as Civilian Technical Officer as per Annexure-A6 order dated 29.7.2005 and posted to Kochi. On coming here, realising that his juniors were promoted to that post earlier, he submitted Annexure-A7 representation dated 18.11.2005. As per Annexure-A8 order dated 2.5.2006, his representation was disposed of by the competent authority. He was given Assured Career Progression (ACP) promotion with effect from 9.8.1999. But, his regular

promotion was not antedated. Therefore, challenging Annexure-A8 order and claiming promotion with retrospective effect, the applicant approached the Central Administrative Tribunal.

3. The main contention of the applicant was that regular service alone will be counted for ACP promotion. Since, for the purpose of ACP promotion his entire service from 1.9.1985 was counted, the same should be counted for regular promotion also. The writ petitioners herein resisted the application contending that there was no post to accommodate the applicant in 1985. For promotion to the cadre of Civilian Technical Officer, three years regular service is mandatory. The applicant's regular service commenced only from 23.7.1999. The post of Foreman was actually available only in 1999 and therefore, by Annexure-A3 order dated 23.7.1999 he was absorbed as Temporary Regular Foreman. Secondly, it was contended that when they published a seniority list of Foreman in 2000, the applicant

did not object to it. Therefore, he cannot be permitted to challenge the seniority in the cadre of Foreman now. So, the writ petitioners prayed for dismissal of the original application.

4. The Tribunal, after hearing both sides, allowed the application. It was ordered that the applicant's service from 1.5.1985 is liable to be counted as regular service for the purpose of promotion. It was also ordered that he shall be granted promotion at least with effect from the date his immediate junior Mr.R.G.Nair was promoted. This writ petition is filed challenging the said order of the Tribunal, which is produced as Exhibit P1.

5. I heard the learned counsel Sri.T.P.M. Ibrahim Khan for the petitioners and Sri.S.Radhakrishnan for the first respondent.

6. The learned counsel for the petitioners contended that in 1985, there was no regular vacancy and therefore, the applicant could not have

been appointed regularly to that post. Even assuming that the said contention is correct, the applicant was liable to be regularly absorbed to the post of Foreman at least with effect from the date his immediate junior Sri.R.G.Nair was regularised in that post. If he gets that date, admittedly, he is entitled to be promoted to the higher post at least with effect from the date the said junior was promoted. Therefore, absence of a vacancy in the cadre of Foreman in 1985 is a poor defence to resist the claim of the applicant.

7. We notice that the contentions of the petitioners have been rightly dealt with by the Tribunal. If the applicant was treated as regularly promoted from 1985 onwards or at least from the date his immediate junior was regularly absorbed, he has got sufficient service for promotion. He has completed three years of service by the time his immediate junior's turn arose and the said junior was promoted. The contention that

the applicant did not object to the seniority list also is not correct. What was published was only a provisional list. From the materials on record, it is clear that the applicant's objection was forwarded to the competent authority. The applicant gets an opportunity to challenge the seniority list only when the final list is published. In this case, the petitioners have no case that the final seniority list was ever published. All the above contentions of the petitioners have been correctly overruled by the Tribunal.

Accordingly, the writ petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

3rd December, 2007

(K.P.Balachandran, Judge)

tkv